*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 13557 OF 2000

%22.12. 2006

T. Venkata Naayana.

….. Petitioner

Vs.

$ Girijan Cooperative Corporation Limited, Visakhapatnam, rep., by its Vice Chairman and Managing Director and others.

…..Respondents

! Counsel for the petitioner: Sri Dr. K. Lakshmi Narasimha.

^ Standing Counsel for respondent corporation: Sri N. Sridhar Reddy,

< Gist:

>Head Note

?

[1] 1999(3) SCC 679
2 (2006(8) Supreme 690
3 (2006) 4 SCC 713)
4 2002(5) ALD 406 (DB)
5 1995(1) ALD 500
6 AIR 1968 SC 266
7 AIR 1968 SC 236
8 1999(7) SCC 332
9 1996(10) SCC 659
10 2002(1) ALD 280(FB)
11 2004 (8) SCC 88
12 AIR 1961 SC 1070
13 1995(3) ALD 786
14 2000(1) ALT (Crl.) 84
15 AIR 1980 SC 840
16 1996(9) SCC 322

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.13557 OF 2000

ORDER:

Seeking to have the proceedings, in Rc.No.5429/97. Admn. dated 10.9.1998, issued by the 1st respondent and the consequential notice, in Rc.No.B/176/97 dated 9.1.1999,

issued by the 4th respondent quashed, the present writ petition is filed.

In his proceedings dated 10.9.1998, the Vice-Chairman and Managing Director of the Respondent–Corporation, dismissed the petitioner from service treating the period of his suspension as "*dies non*" and further directed that he shall make good the loss caused to the respondent-corporation of Rs.54,034-10 with interest. Thereafter, the Senior Manager, Yellandu, (4th respondent), issued notice dated 9.1.1999 directing the petitioner to remit Rs.54,034-10 with 18% interest per annum within 15 days from the date of receipt of the notice. The petitioner was informed that, in case he failed to do so, necessary legal action for recovery would be initiated against him.

Facts, in brief, are that the petitioner, a Junior Stores Assistant, while working in the Mahadevpur unit of the respondent–corporation, was placed under suspension, vide proceedings dated 2.12.1997, pending enquiry into certain allegations. The order of suspension continued to remain in force till the order of punishment of dismissal from service was imposed on him vide proceedings dated 10.9.1998. The Dy.General Manager (Admn.) issued proceedings dated 29.1.1998 framing 10 charges against the petitioner and called for his explanation. In reply thereto, the petitioner submitted his detailed explanation, vide letter dated 3.4.1998, denying all the charges. The 1st respondent, vide proceedings dated 2.7.1998, issued a provisional conclusion order proposing the punishment of dismissal from service. Along with the said order a copy of the enquiry report was enclosed calling upon the petitioner to submit his explanation thereto. The petitioner, in his letter dated 15.7.1998, submitted his explanation requesting that the proceedings be dropped. The 1st respondent, thereafter, passed the impugned order of punishment dated 10.9.1998. The petitioner preferred an appeal thereagainst on 28.10.1998.

In this writ petition, the petitioner would question the competence of the 1st respondent to inflict on him the punishment of dismissal from service and contend that the competent authority to inflict punishment is the Regional Manager and that the appellate authority is the Managing Director. According to the petitioner since charge sheet was issued and the order of punishment was passed by the Managing Director, who is the appellate authority, the petitioner was deprived of his right of appeal. Petitioner would submit that Rule 4, which empowered a superior authority also to inflict punishment, was unconstitutional. Petitioner would contend that the enquiry officer did not conduct any enquiry, that merely on the basis of the statements recorded behind his back, during the preliminary enquiry, the enquiry officer had concluded that the charges were proved, that the persons, whose earlier statements were relied upon, were not produced for cross-examination. Petitioner would submit that, under the rules, it is the duty of the enquiry officer to establish the charge and afford an opportunity to the delinquent employee to cross-examine the witnesses. However, in the present case, as no witness was examined by the enquiry officer, the order of

dismissal was contrary to law and was required to be set aside. Petitioner would also contend that the findings of the enquiry officer are perverse and are based on no evidence, that no documents were supplied to him along with the charge sheet and that the enquiry officer had recorded a finding of guilt against the petitioner based on his personal knowledge. Petitioner would contend that the 1st respondent, in his provisional conclusion order, had made up his mind to impose the punishment of dismissal from service on the petitioner and, since the entire exercise was pre-determined, the order of punishment stood vitiated and was required to be set aside. Petitioner would contend that, while passing the order of dismissal from service, the 1st respondent did not take into consideration any of the objections raised by him. According to the petitioner since the Disciplinary and Appeal Rules, governing employees of the respondent – corporation, provide for imposition of only one penalty, the order of punishment imposed on the petitioner was liable to be set aside as two punishments were imposed on him, one of dismissal from service and the other for recovery of Rs.54,034-10 ps along with interest at 18% per annum. Petitioner would submit that as dismissal from service is a major penalty, and recovery of the pecuniary loss caused to the corporation is a minor penalty, and since a major penalty can only be imposed after due enquiry, the respondents could not have imposed on him the major penalty of dismissal from service.

In their counter affidavit, respondents would submit that the petitioner, while working as a Junior Stores Assistant at Yellandu in the year 1997, had misappropriated huge amounts and had caused them monetary loss and that, on the irregularities coming to his notice, the Assistant Project Officer, ITDA, Bhadrachalam had reported the same to the 1st respondent in his letter dated 26.11.1997. Respondents would contend that the irregularities committed by the petitioner were grave in nature, that he was the custodian of the stocks in the godown of GPCMS and was responsible for supply of provisions to the tribal hostels in the area and that he had resorted to forgery, cheating and misappropriation of amounts for his personal gain. According to the respondents the petitioner, without supplying stocks to the hostels, had raised bills, forging the signatures of the wardens, for a sum of Rs.54,034-10 and it was in such circumstances that he was placed under suspension, vide proceedings dated 2.12.1997, pending enquiry and that, vide proceedings dated 2.12.1997, the Dy. General Manager (Admn.) was appointed as the enquiry officer to enquiry into the charges framed against him. Respondents would submit that, as many as 10 charges were framed against the petitioner, a charge memo was served on him and his explanation called for, that the material available for conducting the enquiry was enclosed to the charge memo, that the petitioner had submitted his explanation thereto on 3.4.1998 and had requested for examination of two witnesses on his behalf i.e., Golla Kanakaiah, Maistry/Hamali and B. Rajaiah, Maistry/Hamali, that the enquiry officer had conducted a detailed enquiry and had recorded the evidence of the then Manager on behalf of the department on 20.4.1998 and

thereafter the petitioner and his witnesses were also examined. According to the respondents, the petitioner did not choose to cross-examine the departmental witnesses. They would contend that the records sought for by the petitioner were also provided, that the enquiry officer had furnished his report dated 6.6.1998 to the 1st respondent who, after considering the enquiry report, had issued the provisional conclusion order dated 2.7.1998, enclosing thereto a copy of the enquiry report, which was served on the petitioner on 4.7.1998. Respondents would submit that the petitioner had filed his explanation to the provisional conclusion order on 15.4.1998 and had referred to the enquiry report therein which established that he was in receipt of the enquiry report and all the other documents relied upon by the department. It is stated that, after considering his explanation and the findings in the enquiry report, a final order was passed, vide proceedings dated 10.9.1998, imposing on the petitioner the punishment of dismissal from service, treating the period of suspension undergone by him as "dies non" and directing him to make good the loss caused to the Corporation of Rs.54,034-10 with interest at 18% per annum. It is stated that the final order of dismissal from service was served on the petitioner on 6.10.1998 against which he preferred an appeal. As the term of the Board of Directors had expired, and as the new Board was not constituted, the petitioner had filed the present writ petition and this Court had granted interim stay of recovery. It is stated that, during the pendency of the writ petition, the Board of Directors was re-constituted and that the Board, vide proceedings dated 10.9.1999, had confirmed the order of the disciplinary authority. Respondents would submit that the petitioner had filed an application seeking amendment of the prayer to include a challenge to the validity of the order of the appellate authority. Respondents would state that the Vice-Chairman and Managing Director had the power to pass the impugned order dismissing the petitioner from service, that as per the service regulations the competent authority, or any superior authority, could initiate disciplinary action against a delinquent employee and, while the Regional Manager was the competent disciplinary authority to impose the punishment, the Vice-Chairman and Managing Director, a superior authority, was also empowered to pass the impugned order of dismissal from service. It is stated that the Board of Directors, vide resolution dated 11.8.1998, had conferred powers on the Vice-Chairman and Managing Director to impose the punishment of dismissal and removal from service on employees of all cadres. It is stated that since an appeal lies to the Board of Directors against the orders of the Vice-Chairman and Managing Director, and as the petitioner had invoked this remedy of appeal, the contention that he had lost his right of appeal was not tenable. Respondents would submit that the enquiry officer had conducted a detailed enquiry and had examined witnesses both on behalf of the department and the petitioner. They would deny that no enquiry was conducted and submit that these allegations were made only to prejudice this Court. It is stated that sufficient opportunity was given to the petitioner to peruse the records and that he had availed such an opportunity.

Respondents would state that the petitioner never complained that the enquiry was conducted arbitrarily or that he was not permitted to peruse the records of the Corporation. It is stated that the order dismissing the petitioner from service was passed by the Vice-Chairman as the charges held established included that of forging the bills and misappropriation of huge amounts. Respondents would state that the Corporation is empowered to recover the loss caused to it.

In his rejoinder, the petitioner would reiterate that the department had not produced any witnesses during the enquiry for cross-examination, that this was clear even from the provisional conclusion order as well as the final order passed by the respondents wherein there was no mention about the evidence of the official witnesses and, if there was any truth in their contention that the witnesses had been examined and that he did not choose to cross-examine them, nothing prevented the department from recording their evidence during trial, that on the contrary there was no whisper about their witnesses or of what they had stated during the enquiry and that the department had relied upon some letters supposed to have been written by them without examining those persons and without giving the petitioner the opportunity of cross-examining them. Petitioner would reiterate that no official or departmental witnesses were examined nor allowed to be cross-examined by him during the enquiry and that the entire action was vitiated for violation of principles of natural justice. Petitioner would contend that the impugned order of punishment does not refer to any of the witnesses having been examined on behalf of the department or the date on which they were examined by the enquiry officer or what was the cross-examination done by him and, in the absence of such averments, it was not open to the respondents to state, for the first time in their counter affidavit, that witnesses were examined in the enquiry. Petitioner would contend that the witnesses referred to in the counter affidavit were his witnesses and not that of the department. Petitioner would emphasize that the counter affidavit was silent as to the name of the departmental witnesses examined in the enquiry and the date on which they were examined. Petitioner would reiterate that two punishments were imposed on him and that, on this score also, the impugned order of punishment was liable to be set aside.

Dr.K.Lakshmi Narasimha, learned counsel for the petitioner, would seek to have the impugned order of punishment quashed on the following grounds:

1. The charges levelled against the petitioner in the departmental enquiry were identical to the charges levelled against him in C.C.246 of 1999 in the Court of the Judicial Magistrate of First Class, Yellandu. As the criminal case was dismissed, and the petitioner was held not guilty of the charges under Sections 468, 471 and 409 I.P.C., the order of punishment, based on the departmental enquiry held on the very same charges, and on the very same set of facts, stood vitiated and was required to be set aside. Learned counsel would rely **Capt. M. Paul Anthony Vs. Bharat Gold Mines**

Limited[1] and **Jasbir Singh v. Punjab & Sind Bank**[2];

2. No witnesses were examined in the departmental enquiry in the presence of the petitioner nor was the petitioner afforded an opportunity of cross-examining them. Reliance was placed on statements recorded behind the petitioner's back to hold him guilty of the charges.

3. The evidence of witnesses examined behind the back of the petitioner, and without giving him the opportunity to cross-examine them, must be eschewed. As there was no other evidence, to establish the charges levelled against the petitioner, the order of punishment, based on the findings of the enquiry officer relying on such evidence, was liable to be quashed.

4. The Discipline and Appeal Regulations of the respondent – corporation provides that only one punishment can be imposed. As two punishments had been imposed on the petitioner i.e., (1) dismissal from service and (2) recovery of the pecuniary loss caused to the Corporation, the impugned order of punishment was liable to be set aside.

Learned counsel would contend that, on the impugned order of punishment being set aside, the petitioner is entitled to be reinstated into service with all consequential benefits. Learned counsel would rely on **Narinder Mohan Arya Vs. United India Insurance Co.Ltd** [3] in this regard.

Sri N.Sridhar Reddy, Learned Standing Counsel for the respondent-corporation, on the other hand, while fairly conceding that the statement in the counter affidavit, that the departmental witnesses were examined first and thereafter the petitioner and his witnesses were examined, was erroneous, would submit that on 20.4.1998, while the witnesses on behalf of the petitioner were examined, on the next day i.e., 21.4.1998 the evidence of Sri T.Mahender Reddy, Senior Manager, Yellandu was recorded. Learned Standing Counsel would submit that, since the then senior manager had deposed in the enquiry, and the petitioner had failed to avail the opportunity of cross-examining him, the mere fact that the petitioner had chosen not to cross-examine the said witness would not vitiate the enquiry. Learned Standing Counsel would submit that, even if the petitioner is held to have been denied the opportunity of cross-examining the witnesses, since a perusal of his explanation to the charge memo would establish that he had admitted his guilt, at least in respect of some of the charges, violation of principles of natural justice during the course of enquiry was of no consequence, since the petitioner could have been imposed the punishment of dismissal from service merely on the basis of his admission and the departmental enquiry was a needless formality and a superfluous exercise. Learned Standing Counsel would submit that, even if some of the charges are held to be established on the basis of the admissions of the petitioner, the respondents were entitled to impose on him the punishment

of dismissal from service. According to the Learned Standing Counsel, this Court, in proceedings under Article 226 of the Constitution of India, would not sit in appeal over the decision of the disciplinary authority on the nature and extent of punishment to be imposed. Learned Standing Counsel would submit that, even if this Court were to hold that the disciplinary proceedings were vitiated for violation of principles of natural justice, as the allegations levelled against the petitioner were grave and serious, the respondents must be given the liberty to now hold an enquiry in compliance with principles of natural justice and, thereafter, take action against the petitioner in accordance with law. Learned Standing Counsel would submit that, in certiorari proceedings, an enquiry by this Court was limited only to the validity of the order and it was not open to the petitioner to contend that, once the order of punishment was quashed, he should be reinstated into service. Learned Standing Counsel would contend that, while the charges in the disciplinary proceedings and in the criminal case may be similar, the judgment in **Capt. M. Paul Anthony**[1] and **Jasbir Singh**[2] could not be applied to this case as the evidence adduced in the departmental enquiry was not identical to the evidence let in the criminal case. Learned Standing Counsel would submit that, even if the impugned order of punishment is quashed and liberty is given by this Court to complete the enquiry in accordance with principles of natural justice, it was always open to the respondents to produce witnesses, other than those examined in the criminal case, to establish the charge. According to the learned standing counsel the only punishment imposed on the petitioner was that of dismissal from service and the very fact that action had been initiated against him, under the provisions of the A.P. Cooperative Societies Act, for recovery of the pecuniary loss caused to the corporation, would establish that the second punishment, of recovery of the pecuniary loss caused to the corporation, had not been imposed. Learned Standing Counsel would submit that the respondents were entitled to recover the amount of pecuniary loss caused to the Corporation and, since the recovery proceedings initiated under the A.P. Cooperative Societies Act was not as a direct consequence of the disciplinary enquiry, it would not amount to a punishment merely because recovery of pecuniary loss is enumerated as one of the minor penalties.

Before examining the rival contentions it is necessary to refer to the relevant rules and applicable provisions:-

DISCIPLINARY, PUNISHMENTS AND APPEAL RULES:-

1. An employee who commits a breach of the Rules of the Corporation or who displays negligence, inefficiency, disobedience or indolence or who knowingly does anything detrimental to the interests or prestige of the Corporation who commits a breach of discipline or is guilty of any other act of misconduct or misbehaviour shall be liable for any one of the penalties specified in Rule (2) below:

2. NATURE OF PENALTIES:

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on an employee referred to in Rule (1) above.

a) Minor Penalities

I) Censures

II) Fine (to be imposed only on categories VIII and below)

III) With-holding of increments or promotion.

IV) Recovery from pay of the whole or any part of pecuniary loss caused to the Corporation.

b) Major Penalties

V) Suspension (where an employee has been kept under suspension pending enquiry)

VI) Reduction to a lower rank in seniority list or to a lower post not being lower than that to which he was directly recruited or to lower time scale not being lower than that to which he is directly recruited or to a lower stage in a time scale.

VII) Compulsory retirement.

VIII) Removal from service which does not disqualify him for future employment in the Corporation to a post lower than the one from which he is removed.

IX) Dismissal from service which disqualified him for future employment.

Appendix-E prescribes the procedure to be followed in inflicting punishments and the relevant clauses therein are referred to hereunder:-

2. **REQUEST FOR AN ORAL ENQUIRY AND/OR TO BE HEARD IN PRESENCE:**

a) if within the prescribed time or such further time as the enquiry officer may give, no written statement in defence is filed and no request, in writing, is made for oral enquiry or for being heard in person or if the delinquent officer absents himself without sufficient reason to attend the enquiry on the date fixed, it is always better that the enquiring officer proceeds with the enquiry ex-parte to satisfy himself about the truth of the charges. An enquiry must necessarily be held where the employee asks for it or has expressed a desire to be heard in person, or having regard to the written statement in defence, or the statement made by the employee himself when he is heard in person, a further enquiry is necessary to decide the truth of the charges.

B) The Enquiring Officer shall examine the delinquent orally, if he desires to be heard in person. The delinquent should not be compelled to be a witness against himself.

3. **RECORDING OF EVIDENCE.**

a) At the oral enquiry evidence should be heard on charges which are not admitted. The enquiry, however, should not extend to matters not mentioned in the charge sheet.

b) The evidence in support of the charges should be recorded first and the accused employee given an opportunity to cross-examine the witness.

c) The evidence of each witness should be recorded in the form of a narrative and within the evidence is completed it should be read to the witness, and if necessary, explained to him in the language in which it was given. If the witness denies the correctness of any part of the evidence, when it is read over to him, the Enquiry Officer may either carry out the correction, or instead of correcting the evidence, make a memorandum of the objection taken and add such remarks as he thinks necessary. Then the statement shall be signed by the Enquiry Officer. Copies of such evidence as are required by the accused employee should be supplied to him free of costs.

NOTE: No document or statement produce or recorded at the preliminary enquiry can be relied on at the regular enquiry, unless such document is duly proved on the person who made the statement in regular enquiry or unless such document or statement is admitted by the accused employee.

7. ENFORCING THE ATTENDANCE OF WITNESS:

The officer holding the enquiry has no power to enforce the attendance of any non official witnesses. As regards official witnesses he should be able to procure their presence either by writing to them direct or through the administrative heads of appropriate levels. Normally, the request to call on official witness should not be rejected. When, however, it appear, that the request is frivolous or vexatious, that it is made with a view to unnecessarily prolong the enquiry and that the facts which he is expected to speak to (according to the statement of the accused are not relevant for the purpose of enquiry) the request should be refused and the reasons thereof

recorded in writing and communicated to the delinquent Officer.

8. Inspection of documents by the employee concerned:

The enquiry officer should give every reasonable facility to the accused employee to inspect any documents or records necessary for the purpose of preparing his defence. Such inspections should be arranged in the presence of a responsible officer to ensure that the records are not tempered with in any manner.

9. Enquiry Officer's responsibility:

It is the Enquiring Officer's responsibility to arrive at the truth or falsity of the charges against the employee. For this purpose, it is his responsibility to put whatever question as may be necessary both to the witness examined in support of the charges and to the witnesses produced by the accused employee.

10. Submission of another written statement by the accused:

After the entire evidence has been heard, the person charged shall, if he so desires put in a further written statement to his defence and also his defence orally to the Enquiring Officer.

11. Drawing up of the findings of the enquiring officer:

a. On completion of the enquiry including the personal examination of the accused, if any, the Enquiry Officer shall record his findings in respect of each charge, with reasons therefore and forward the proceedings to the authority appointing him. The Enquiry officer should not rely on any document or material which the delinquent had no opportunity to explain.
b. The proceedings forwarded shall contain:
    i. The charges framed against the employee along with the grounds of charges:
    ii. Written statement filed in defence, if any.
    iii. Record of the evidence given during the oral enquiry (two copies)
    iv. A Memorandum of the points urged by the employee concerned during the personal hearing, if any.
    v. A statement of the findings of the Enquiry Officer.
    vi. The penalty recommended.

It is well settled that the disciplinary authority cannot make use of any material or evidence collected by it, in the course of preliminary enquiry, against the delinquent officer unless these material and evidence are produced in accordance with law in a regular departmental enquiry and the delinquent employee is given a fair opportunity to meet these adverse material and evidence. (**K. David Wilson Vs. Secretary to Govt., Law Department (Legislative Affairs and Justice, Hyderabad**[4]).

While Dr. K. Lakshmi Narasimha, learned Counsel for the petitioner, would emphasize that the entire enquiry was a farcical exercise wherein evidence was adduced only on behalf of the charge sheeted employee and the statements of witnesses recorded prior to the departmental enquiry were relied upon by the enquiry officer to hold that the charges levelled against the petitioner had been established, Sri N. Sridhar Reddy, learned Standing Counsel, would submit that while it is true that the witnesses produced by the petitioner were examined first on 20th April, 1998, on the very next day ie., on 21st April, 1998 the Senior Manager of the respondent corporation was examined as a management witness. Learned Standing Counsel would submit that though the said witness was examined in the departmental enquiry, the petitioner had chosen not to cross-examine him and, having failed

to avail the opportunity of cross-examining the management witnesses, it was not open to the petitioner to contend that the enquiry proceedings were vitiated for failure to comply with the rules of natural justice.

The petitioner specifically stated, in his rejoinder, that the statement of the management witness was not recorded in his presence and that he was not given the opportunity to cross-examine him. Rule 11(b)(III), of the Discipline & Appeal Rules of the Respondent-corporation, requires a record of the evidence adduced during the course of enquiry to be maintained by the enquiry officer and two copies thereof to be forwarded, on completion of the enquiry, to the disciplinary authority. The Respondent-corporation was directed to place before this Court a copy of the record of evidence adduced during the oral enquiry. Learned Standing Counsel, on instructions, would submit that no such record is available and except for the statement given by the Senior Manager on 21.04.1998, there is no other record available to show that the said witness was examined on 21.04.1998 in the departmental enquiry, in the presence of the petitioner or that he was given an opportunity to cross-examine the said management witness. In the light of the specific plea, in the affidavit and the rejoinder, that the petitioner has been denied reasonable opportunity of cross-examining the management witness, and as the record required to be maintained in this regard has not been produced before this Court despite being called upon to do so, an adverse inference has necessarily to be drawn and the contention, on behalf of the petitioner, that he was denied the opportunity of cross-examining the management witness is required to be accepted. As a result the enquiry proceedings must be held to be vitiated for violation of the principles of natural justice.

Sri N. Sridhar Reddy, learned standing counsel for the respondents would, however, submit that as petitioner has admitted to some of the charges, even if the enquiry is held to be vitiated for non-compliance of the rules of natural justice and since the very requirement of conducting an enquiry was an unnecessary exercise in the light of these admissions, the punishment imposed by the disciplinary authority does not call for interference.

A charge memo issued by the Disciplinary Authority and the reply/explanation offered by the delinquent official in a departmental enquiry can be compared to a plaint and a written statement in a suit. A charge memo, and the reply/explanation thereto, in a departmental enquiry, are pleadings. (**K. Venkateswarlu Vs. Nagarjuna Grameena Bank**[5]). At an enquiry, facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation of the evidence on which he is charged and to lead his defence. If, however, the charged employee himself has, in answer to the charge levelled against him, admitted his guilt, there will be nothing more for the employer to enquire into. If the allegations are denied by the employee, the burden of proving the truth of those allegations will be on the employer and the witnesses examined by the employer, must be allowed to be cross-examined by the employee, and the latter must

also be given an opportunity to examine himself and adduce any other evidence that he might choose in support of his plea. But if the employee admits his guilt to insist upon the employer to let in evidence about the allegations will only be an empty formality. In such a case it will be open to the employer to examine the employee himself, even in the first instance, so as to enable him to offer any explanation for his conduct or to place before the employer any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the employee, under such circumstances, should not savour of an inquisition. If, after examination of the employee, the employer chooses to examine any witnesses, the employee must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose. If admissions are taken as a whole with all its qualifications, and it is clear that the delinquent employee has admitted the facts necessary to establish the charge against him, it cannot be held that the enquiry was held in breach of the principles of natural justice. (**The Central Bank of India Vs. Karunamoy Banerjee**[6]).

Where the accusation is based on a matter of record, or the facts are admitted, it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and which, if he cannot satisfactorily explain, must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question of justice and fairplay. If the second procedure leads to a just decision of the disputed points and is fairer to the delinquent than the ordinary procedure of examining evidence against him first, no exception can be taken to it. It is, however, wise to ask the delinquent whether he would like to make a statement first or wait till the evidence is over but the failure to question him in this way does not ipso facto vitiate the enquiry unless prejudice is caused. It is only when the person enquired against is held at a disadvantage or has objected to such a course that the enquiry may be said to be vitiated. In all cases in which the facts in controversy are disputed the procedure ordinarily to be followed is that, before the delinquent is asked anything, all the evidence against him must be led. (**Employees of Firestone Vs. Workmen**[7]).

Giving of an opportunity of being heard or holding an enquiry is a check and balance concept that no one's right be taken away without giving him/her an opportunity of being heard in compliance with the rules of natural justice or where the statute so requires. But this procedure is not necessary in a case where the allegations and the charges are admitted and no possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations? In a case where the facts are admitted, the case reveals itself and is apparent on the face of the record, and in spite of an opportunity no worthwhile

explanation is forthcoming, it would not be a fit case to interfere with the termination order. (**Dharmarothmakara Raibahadur Arcot Ramaswsamy Mudaliar Educatinal Institution Vs. Educational Appellate Tribunal**[8])

Strict Rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would be permissible for the authorities to prove that the delinquent employee did make such a confession/admission and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. (**Kuldip Singh Vs. State of Punjab**[9]). A delinquent employee should not ordinarily, having regard to the scope and ambit of a domestic enquiry, be permitted to resile from his earlier stand. An admission by a party to the proceeding is binding on him proprio vigore. He, at a subsequent stage, should not be permitted to resile therefrom or explain away the same. (**H. Kondal Reddy Vs. Central Bank of India, Hyderabad**[10]). Admission is the best piece of evidence against the person making the admission. It is, however, open to the person making the admission to show why the admission is not to be acted upon. (**Delhi Transport Corporation Vs. Shyam Lal**[11])

If a delinquent is proved to have made an admission then it is his duty to explain the same and not that of the employer to ask him to do so. The effect of an admission is merely to shift the onus on the party making them unless a plea of estoppel can be successfully invoked. The evidentiary value of admissions depends upon the circumstances in which they are made and the possibility of incorrect statements being misguidedly made, by ignorant persons, should not be overlooked. If admissions are made with regard to the legal consequences under misapprehension as to the true interpretation of law it is not binding upon a person. (**K. Venkateswarlu**[5]).

In a disciplinary proceedings if the delinquent admits the charge framed against him or makes an unconditional and unqualified confession, then there is nothing more to be done by way of an enquiry and it cannot be argued that the procedure of a departmental enquiry should have been applied notwithstanding such admission or confession. When admission made by a delinquent shows that he had committed misconduct then the question of violation of principles of natural justice cannot have any relevance. If the employee admits his guilt in the enquiry, that is to say in his reply to the charge memo or before the enquiry officer, there is no obligation on the management to lead evidence on merits as that would be an empty formality. If an order made by the disciplinary authority, imposing punishment on a delinquent, could be sustained on the basis of the admission made by him, the punishment cannot be set aside by the Court on the ground that no witness was examined on behalf of

the disciplinary authority. Examination of the witnesses on behalf of the disciplinary authority, in such facts situation, is unnecessary. Further, in case the delinquent admits the guilt unconditionally and clearly, and despite that the employer holds a departmental enquiry against him and the Court finds certain flaws or defects in such an unnecessary enquiry conducted by the employer, even then the Court cannot set aside the order made by the employer imposing punishment as, even if the defective enquiry is conducted, no prejudice is caused to the delinquent and action could have been taken against him merely on the basis of his admission. (**K.Venkateswarlu**[5]).

If the statements made by the delinquent do not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry would certainly constitute a serious infirmity in the order of punishment passed against him. It is of the utmost importance that, in taking disciplinary action against a charged employee, a proper departmental enquiry must be held against him after supplying him with a charge-sheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge-sheet. The departmental enquiry is not an empty formality. It is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the charged employee and to hold that, in view of the admissions made by him, the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against charge sheeted employees terminating their services. (**Jagadish Prasad Saxena Vs. The State of Madhya Bharat**[12]).

In **The Nagarjuna Grameena Bank** v. **M.P.Bruce**[13], a Division Bench of this Court observed:-

".....In the above said judgments, it has been laid down that the statement made by a delinquent officer would amount to admission of guilt only when the said statement is made voluntarily and in unequivocal terms. **The entire statement made by the delinquent officer must be considered in toto to come to the conclusion that such statement amounts to admission of guilt. In case, after regarding the entire statement, the only conclusion that could be reached is that the delinquent officer has accepted the guilt, then it has to be held that the delinquent officer has admitted the guilt in unequivocal terms and that no further enquiry is necessary and the enquiry officer can submit his report without conducting further enquiry. Otherwise, the enquiry officer has to conduct enquiry by examining the witnesses to prove the charge and shall give an opportunity to the delinquent officer to cross-examine the said witnesses and to lead his evidence and shall proceed further in accordance with law. But, where the enquiry officer, merely on the basis of a vague statement made, by the delinquent officer, or considering only a part of the statement, without taking the statement in toto into account, comes to the conclusion that the delinquent officer has admitted the guilt and on such a footing, proceeds, without conducting further enquiry, to make a report finding the delinquent officer guilty of the charges, it has to be held that such an enquiry is no enquiry in the eye of law as it is not a fair enquiry.....**

.....The delinquent officer-respondent herein had submitted an explanation to the charge-memo. He submitted his explanation with respect to all the charges. In the first part of the explanation, he disputed the veracity of the charges and stated the circumstances in which a particular thing or act happened. In the latter part of the explanation, he stated that in case the authority comes to the conclusion that the charges levelled against him are proved, he may be pardoned. Therefore, by reading the explanation as a whole it

is not possible to conclude that the delinquent officer-respondent herein has admitted the guilt in clear and unequivocal terms……." (emphasis supplied)

If, indeed, the petitioner had categorically and unequivocally admitted to the charges levelled against him, the mere fact that an enquiry was held, which is found to be defective, would be of no consequence and if, on the basis of such admission, the charges levelled against the delinquent employee can be held to be established and such established acts of misconduct would justify imposition of punishment of dismissal from service, no interference is called for in proceedings under Article 226 of the Constitution of India.

In order to examine this contention, as to whether the charges have been categorically and unequivocally admitted to by the petitioner, it is necessary to refer to the charges levelled and the explanation submitted by him in reply thereto.

CHARGE No.1: "that Sri T. Venkatanarayana, Jr. Stores Assistant on deputation to GPC. Society Yellandu raised the following fictitious credit bills as having supplied DR items to the following Hostels."

1. STBH (Old), Yellandu Bill No. 250, Dt: 20.3.97 Rs.9,807.00
2. STBGH, Sublaid ,, 7998, Dt: 26.2.97, Rs.14,151.50
3. STBH, Vallabhi ,, 7999, Dt: 27.2.97, Rs.14,793.20
4. STBH, Kusumanchi ,, 8000, Dt: 27.2.97, Rs.15,282.40

EXPLANATION:

I submit that I had actually supplied the stock under thorough acknowledgement of the concerned warden of ST Boys Hostel (Old), Yellandu. The Hamali charges claimed by me in having loaded and unloaded the stock as per Vr. No. 228 dated 25.03.97 may kindly be seen to cross check the transaction.

Regarding supply of Food provisions to the remaining 3 (three) Hostels of Khammam circle I am to submit that I had sent the stock not immediately after raising the credit bills, but at a latter date after purchasing the stock as there are no certain stocks available in the godown. The wardens of the Hostels have approached the Senior Manager, GPC.Society Ltd., Yellandu and requested that the stocks were not issued to them for February, 97 and the quota will lapse, if the stocks are not supplied before the end of February, 97. The Senior Manager, Yellandu instructed to issue bills, and to supply the stock by purchasing where ever necessary. Therefore the stocks were supplied by loading into the lorry and sending them through messengers who were kept at my disposal. The Lorry transportation as per Vouchers No. 588 and 589 claimed by me on 31.03.1997 is the evidence in having supplied the stock to the Hostels. There is also another evidene of Hamali charges (for Loading and Unloading) claimed as per Vr. No. 147 on 17.3.97.

The messengers who were deputed along with the vehicle have submitted the bills duly obtaining the signatures of the concerned wardens in having received the stock as per bills.

The wardens wantonly denied the receipt of stock, but I had actually sent the stock through Lorry along with the messenger. Therefore raising fictitious credit bills does not arise.

I therefore request to kindly drop the charge.

CHARGE NO.II.

"that Sri T. Venkatanarayana, has resorted to forgery of the signatures of wardens of the Hostels as mentioned in charge No.1 in raising the above bills and forgery for signature of others is an offence."

EXPLANATION:

I had never did so and there is no necessity of forgery, as I had actually sent the stock to the Hostels through messengers kept at my disposal, not immediately after raising but after receiving the stock in the godown in March, 97.

Therefore I am innocent in the matter, as I had never resorted to forge the signatures of others. The allegation levelled against me is baseless.

I therefore request to kindly drop the charge.

CHARGE NO.III.

"that Sri T. Venkatanarayana, failed to claim the bills No.2,3 and 4 stated in charge NO.1 above along with other bills of February, 97 but claimed in March, 97 wantonly delayed, with malintention so that they get passed in the treasury in the rush of clearing March, 1997 bills."

EXPLANATION:

In this regard I submit that this is not only one occasion of claiming the February, 97 bills in March, 97 but almost all in every month 2 to 3 months bills were claimed at one stretch. This happens because at the time of supply of DRs stocks, the concerned wardens will not available. Therefore the stocks will be unloaded at Hostels by handing over to the watchmen or any other staff that are available concerned to the Hostel. Subsequently to get the signatures on the bills it will be delayed, and the wardens will send the bills

leisurely. There are occasions that the messengers sent from office were returned without obtaining bills duly signed stating that wardens are not available.

In the circumstances explained above the bills were claimed lately in March, 97. But there is no any malafide intention as attributed in the charge.

I therefore request to kindly drop the charge.

CHARGE NO.IV.

"that he resorted t tampering of office records with a malafide intention to cheat the GCC and Govt. for his personal gain".

EXPLANATION:

I submit that I had not corrected the bills that were submitted to the Dist. Tribal welfare officer, Bhadrachalam. Nor did I correct the bills that were furnished to accounts section to record necessary entries in the books of accounts. The dates in the bills of last copy were corrected so as to explain the Auditor the actual position at a latter date, that too only to keep it in my memory. By doing so I had not gained anything and there is no any malafide intention.

I therefore request to kindly drop the charge.

CHARGE NO.V.

"that Sri T. Venkatanarayana raised fictitious bill No. 7999 and 8000 on Hostels on 27.2.97 while there are no actual stock balances by that date as seen from the stock register maintained by him, specifically for items of G.N. Oil, B.G. Dhall, Onions, chilly powder, Garlic, Bengal gram Dhall and mustard".

EXPLANATION:

It is a fact that the stocks are not available in the godown on the day of raising the bills. The bills were raised only on the request of the wardens made to the Senior Manager, Yellandu, stating that the budget and quota will lapse if the bills are not issued before the end of the month. The Senior Manager, Yellandu instructed to issue the bills and to supply the stock immediately after purchase.

But there is no any evil intention, and the transactions were made only on the direction of the Senior Manager, Yellandu.

I therefore request to kindly drop the charge.

CHARGE NO.VI.

"that Sri T. Venkatanarayana failed to follow the procedure of payment to DRs supplies byDRs/cheques but paid by cash deliberately for personal gains."

EXPLANATION:

Here I am to submit that I am neither the person responsible nor competent enough to arrange payments by DDs/Cheques. The Senior Manager, Yellandu being the Head of the office is competent to arrange payment. The Senior Manager, Yellandu paid me purchase advance, instructed to pay the amount to the parties for the stocks received in the godown. Hence from the purchase advance available with me I had paid the bill amounts to the concerned parties in front of the Senior Manager, Yellandu. The Senior Manager, Yellandu had admitted the bills for adjustment against my purchase advance. Accordingly my advance amount was reduced in the books of accounts.

Therefore I am not at all responsible for the charge, and hence request to kindly drop the charge.

CHARGE NO.VII:

"that Sri T. Venkatanarayana resorted to purchasing the D.Rs from parties not approved by the purchase committee and thus violated instructions of DM and purchase committee".

EXPLANATION:

In this regard I submit that I am not an independent officer to purchase the stocks. The Senior Manger, Yellandu is only the competent officer to make any transaction in the society, I have t act only as per the directions of the Senior Manager. My duty is to receive the stock that were purchased by the society and to distribute them as per the directions of the Senior Manager. Therefore I am not responsible for the charge.

I therefore request to kindly drop the charge.

CHARGE NO. VIII:

"that he cheated the corporation with malafide intention of personal gain where by he produced fictitious purchase bills for DR items without actual purchases and got the bills adjusted to his "Due to his purchase advance".

EXPLANATION:

As explained to the earlier charges, I am not co-competent to purchase the DRs stocks. The Senior Manager, Yellandu is alone competent for any purchase in the society. I am responsible to the extent of receiving the stocks, distribute them as per the directions of the Senior Manager and to maintain them in a stock register. As alleged in the charge it is not correct to say that I had produced fictitious purchase bills for DR items. I had received the stock in the godown, recorded necessary stock entries in the stock register and presented them to the Senior Manager, and only on the instructions of the Senior Manager, Yellandu from the advance kept at my disposal, I had paid the bill amounts to the party in front of the Senior Manager at Yellandu and requested to adjust the bills against my purchase advance. Thus cheating and having malafide intention does not arise.

I therefore request to kindly drop the charge.

CHARGE NO.IX:

"that Sri T. Venkatanarayana misappropriated the corporation money to a tune of Rs.2,07,116.50 by claiming fictitious purchase bills as shown in charge No.8."

EXPLANATION:

My explanation to charge No.8 holds good, and attributing misappropriation for the stocks received in the godown is not fair on the part of the Management. To the extent of Drs purchases, I am not responsible, but the stocks purchased by the Senior Manger, Yellandu were received by me in the godown. After receiving the bills from the party and only on the direction of the Senior Manager I had paid the amount kept at my disposal that too infront of the Senior Manager, Yellandu and the bills were adjusted duly passing by the Senior Manger against my advance amount.

In the circumstances explained above I request to kindly drop the charge.

CHARGE NO.10.

"that Sri T. Venkatanarayana shown false account of stock in the stock register and cheated the GCC and Govt. showing that he delivered the stocks to Hostels through bills by a date much before they are stated to have been purchased by him."

EXPLANATION:

It is a regular practice that as per the orders placed over phone by the Senior Manager, Yellandu, the private merchants used to supply the stocks in advance, and will be sending the bills at a later date. Accordingly the stocks received in the godown were distributed to the different hostels and our DR Deposit. Therefore it may kindly be observed that the issues are shown earlier, than the stock entry recorded in the stock register. Thus there is no mismanagement and misappropriation, as the stocks were actually supplied to the hostels. It is also a practice that whenever the wardens have to purchase the stocks in open market, they have to obtain "No stock certificate" from the Senior Manager, Yellandu. But it is learnt from the Enquiry Officer that the stocks were purchased by the wardens in the open market without obtaining "No stock certificate". It is clearly evident that the wardens with the collusion of office staff of Dist.Tribal welfare, Bhadrachalam, and supported the wardens to make out a false case against me.

In this case it was found that I had cheated the GCC and Govt. showing that I had delivered the stocks to Hostels through bills by a date much before they are stated to have purchased by me, which is a false allegation. I had clearly explained above the actual and practical experience in receiving and distribution of stocks. This is a well known fact to all of us in the corporation, and this practical thing will take place at every society so as to facilitate the wardens in their day to day needs of the Hostels.

When the Enquiry officer found in the stock register (as per the statements of few wardens) that the stocks were shown as issued without having stocks in the godown as per stock register, it may kindly be observed that along with the Hostel wardens who raised allegation of not receiving the stock, there are other transactions also to whom the supplies were made, and subsequently the amounts also were recovered from the authorities concerned.

In the charge Memo, it was alleged that in 4 (Four) commodities I had shown the supplies which are having stock balances in the stock register. I submit hereunder the particulars of stocks; supplied to other Hostels, Ashram Schools, I.C.D.S., Sudimella and APRS, Subiimella, and subsequently the amounts also were realized from them.

A. G.N. Oil.	Bill No.	Date	Quantity.
1. A/S.Chennangulagadda	0399	22-3-97	1.00.000
2. A/S.Markodu	0412	25-3-97	0.60.000
3. AUPS. Moolapocharam	0437	21-3-97	0.60.000
4. AHS. Gangaram	0438	21-3-97	0.60.000
B. Green gram Dhall:			
1. S.M. Sudimella	176	08-03-97	0.10.000
2. S.M. Sainapally	3830	12-03-97	0.46.000
3. A/S. Shambunigudem	0404	13-03-97	1.00.000
4. A/S. Kachanapally	7981	11-03-97	0.46.000
5. AUPS. Moolapocharam	0437	21-03-97	0.40.000
C Black gram Dhall:			
1. I.C.D.S. Sudimella	0213	02-03-97	9.60.000
2. ,,	7963	06-03-97	9.60.000
3. ,,	0457	22-03-97	2.40.000
4. STBH, Thirumalaipalem	0216	08-03-97	0.03.000
5. AHS, Gangaram	0413	15-03-97	0.05.000
6. STBH, Yellandu(new)	7976	10-03-97	0.05.000
7. A/S. Kachanapally	7981	11-03-97	0.05.000
8. STBH. Gundala	7986	11-03-97	0.05.000
9. A/S. Markodu	79	12-03-97	0.03.000
10. A/S Rekakayalapally	7996	13-03-97	0.10.000
11. STBH, Khammam	0237	14-03-97	0.20.000
12. A/S. Melopocharam	0238	15-03-97	0.02.000

13. STBH, Subiledu 0242 15-03-97 0.01.000
14. STGH, Khammam 0244 15-03-97 0.02.000
15. STGH, Khammam (B) 0243 15-03-97 0.02.000
16. STBH, Yellandu 0414 17-03-97 0.02.000
17. AHS.Chjeenangula gadda 0399 23-03-97 0.04.000
18. AUPS. Moolapocharam 0437 21-03-97 0.05.000

D. Bengal gram Dhall:

1. ICDS. Sudimella 7963 06-03-97 9.60.000
2. AHS. Gangaram 0438 21-03-97 0.50.000

As against the above credit supplies the amounts were received from the Dist. Tribal Welfare Officer Bhadrachalam except to the Hostels which are under objection. In this regard it is to submit that when there is no stock at all, how can I supply the stock to the institutions as shown above, and how can they arrange payment without actually receiving the stock by them.

Along with the Hostels and Ashram schools who raised objection, the stocks were issued to the ICDS., sudimella and APRS (G) Sudimella in March, 97. Subsequently the following amounts, as against the above credit supplies were received by Demand drafts.

I. ICDS., Sudimella:

D.D. No.	Date	Amount
0378923	31-03-97	63,000-00
0378798	17-03-97	63,000-00
0378902	29-03-97	17,000-00
	Total	1,43,000-00

II. APRS (C), Sudimella:

How can the institutions pay the amounts with actually receiving the stock. In the circumstances explained above it may kindly be observed that the warder with a preplan only to blame our organization playing fowl game with the collusion of their office who are supporting in the D.T.W.O., office, Bhadrachalam. That too this allegation was raised by the wardens only I had rendered my services from 1992 to 1997 without any remark. Therefore this is asame played by the wardens to defame me and our organization.

Thus it may kindly be observed that I had received the stock in the godown and distributed the stocks as shown in the stock register.

In the circumstances explained to all the charges above I submit that I am not quality in discharging my duties. I therefore request to kindly drop all the charges levelled against me as oblige."

On considering the explanation, submitted by the petitioner in reply to the charge memo, in its entirety and with all its qualifications, it cannot be held that he has admitted the facts necessary to establish the charge against him, in categorical and unequivocal terms. The charges levelled against the petitioner include his having raised fictitious credit bills and of having forged the signature of wardens of the hostels. The petitioner did not admit to his having raised fictitious credit bills or to have forged the signatures of wardens. On the other hand, it is his specific case that the supplies were made to the hostels, albeit belatedly. In his concluding remarks in the explanation the petitioner would reiterate that what he has done was in accordance with the past practice in the respondent corporation. It cannot, therefore, be said that there has been a categorical and unequivocal admission of the charges by the petitioner rendering holding of a departmental enquiry an unnecessary exercise or that the defective enquiry held, to enquire into the charges levelled against the petitioner, is liable to be ignored. I see no reason to strain facts to such an extent or to carry out a microscopic evaluation thereof to ascertain whether an inference of admission of guilt can be drawn. Since the contention that the petitioner has admitted his guilt, obviating the requirement of holding a departmental enquiry, does not merit acceptance, it is wholly unnecessary for this Court to deal with the contention of Dr. K. Lakshmi Narasimha, learned Counsel for the

petitioner, that in the absence of necessary pleadings in this regard in the counter affidavit, and as the order of punishment was not passed on the basis of the petitioner having admitted to the charges, it was not open for the respondents to raise this plea for the first time during the course of hearing of the writ petition.

As the departmental enquiry stands vitiated for non-compliance of the applicable rules, and the principles of natural justice, the order of punishment is liable to be quashed, leaving it open to the respondents to hold an enquiry, into the charges levelled against the petitioner, in accordance with the Discipline and Appeal Rules of the respondent Corporation and in compliance with principles of natural justice and thereafter take action, against the petitioner herein, in accordance with law. Since the order of punishment is being set aside on the ground of violation of the applicable rules, and for non-compliance with the principles of natural justice, it is also unnecessary for this Court to examine the contention as to whether the petitioner was imposed two punishments or not. Since the impugned order, of the Vice Chairman and Managing Director, dated 10.09.1998, whereunder the petitioner was dismissed from service, his period of suspension was treated as "*dies non*" and he was directed to make good the pecuniary loss caused to the respondent-Corporation of Rs.54,034.10ps, has been set aside in its entirety, this contention does not necessitate examination in the present writ petition.

The contention of Dr. K. Lakshmi Narasimha, learned Counsel for the petitioner, that since the charges levelled against the petitioner in the criminal case and the charges in the departmental enquiry are identical, it would necessitate all further proceedings in the departmental enquiry to be quashed, consequent upon the petitioner's acquittal in the criminal case, is required to be examined.

In **Captain M. Paul Anthony**[1], the Supreme Court observed:-

"……..The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (*ii*) and (*iii*) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the

> departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest…..

……**There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, the raid conducted at the appellants residence and recovery of incriminating articles therefrom. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the raid and recovery at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand**……

…….**Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case**……..
(emphasis supplied)

If the departmental enquiry and the criminal case are based on identical set of facts and the evidence in both the proceedings are common, on the employee being acquitted in the criminal case, the order of dismissal passed against him pursuant to a departmental enquiry may also be required to be set aside.

It is not in dispute that the charges in the criminal case and in the disciplinary proceedings are similar. In C.C. No. 246 of 1999, the Judicial Magistrate of I Class, Yallandu, in his judgment dated 28.08.2003, noted that the evidence of P.Ws-2 and 3 (the wardens), led in support of the allegation that the petitioner-accused had forged the signatures of wardens on the vouchers without supplying goods, revealed that the signature in Exs.P-2 and P-3 did not belong to them. The learned Magistrate, however, held that there was no material on record to hold that the petitioner had forged their signatures. While noting that the signatures were sent to the hand writing expert, the learned Magistrate held that the opinion of the hand writing expert was not exhibited, that the Investigating Officer had not been examined and that the prosecution has failed to produce them in spite of issuance of summons and sufficient time being granted by the Court. The learned Magistrate held that non-examination of the investigating officer was fatal to the prosecution and that the investigating officer had committed a glaring error in the matter of collecting the admitted signature and the hand writing of the accused, as he himself had collected the specimen signatures and hand writing of the accused in the presence of mediators instead of requisitioning the competent Magistrate to do so. Relying on the judgment of this Court, in **Ch. Venkateswar Rao Vs. State of A.P.**[14], the learned Magistrate held that the action of the investigating officer, in obtaining the signatures and hand writing of the accused, was

fatal to the prosecution. The learned Magistrate held that there was no material on record to show that the accused had forged the signatures of the wardens on the vouchers and that he was not inclined to accept the testimony of P.Ws- 1 to 4 to hold that the accused had forged the vouchers. The learned Magistrate held that the prosecution ought to have established beyond reasonable doubt, as to who had forged the document and it was only thereafter at next stage did the question arise whether such forged document had been used by the accused as genuine. The learned Magistrate also held that it could not be said that the petitioner-accused had attempted to misappropriate Rs.54,034.10ps and that the prosecution had failed to prove that the petitioner-accused had forged the signatures of the wardens on the vouchers for the purpose of cheating, that the accused had used the forged documents as genuine and had committed breach of trust. It is in these circumstances that the petitioner was acquitted in the criminal case. It is evident from the judgment, in C.C. No. 246 of 1999 dated 28.08.2003, that neither the hand writing expert to whom the signature was sent for examination nor the investigating officer, who had obtained the signatures, were examined by the prosecution. Since the order of punishment dated 10.09.1998 is being quashed, leaving it open to the respondents to hold an enquiry in compliance of principles of natural justice, it cannot be said with certainty that the very same witnesses in the criminal case would alone be examined and not any other witnesses. In any event such a contention is premature as it is not for this Court to hazard a guess as to whether the very same witnesses, who were examined in the criminal case, would alone be examined in the departmental enquiry.

Reliance placed on behalf of the petitioners on the judgment of the Supreme Court in **Jasbir Singh[2]**, is misplaced. In **Jasbir Singh[2]**, the Supreme Court referred to its earlier judgment in **Captain M. Paul Anthony[1]** and held that in cases where the departmental proceedings and the criminal case were based on identical set of facts and the evidence in both the proceedings were common and the employee was acquitted in the criminal case, the order of dismissal already passed may also be set aside. In **Jasbir Singh[1]**, not only was the delinquent employee acquitted in the criminal case, the suit filed by the respondent bank for recovery of the embezzlement amount of Rs.25,000/- was also dismissed by the Civil Court. The order of the Civil Court had attained finality. The Supreme Court held that the judgment in the civil suit, having attained finality, was binding on the bank and that the High Court had failed to take note of the decision of the Civil Court which it could not have refused to look into. The judgment of the Supreme Court in **Jasbir Singh[2]** has no application to the facts of the present case and is of no assistance to the petitioner.

The only contention which remains to be examined is whether, as a consequence of the impugned order of punishment being quashed, a mandamus should issue to the respondents to reinstate the petitioner into service. Dr. K. Lakshmi Narasimha, learned

Counsel for the petitioner, would rely on the judgment in **Narinder Mohan Arya**[3], wherein the Supreme Court observed:

"…….. For the foregoing reasons the impugned judgments cannot be sustained which are set aside accordingly. Although, the consequence of setting aside of the said orders would have been to remit the matter back to the disciplinary authority for consideration of the matter afresh on merit, but having regard to the fact that the disciplinary proceedings were initiated against the appellant as far back in 1976, we refrain ourselves from doing so. He, indisputably, has suffered a lot. However, the question which arises is what relief should be granted to the appellant. The appellant shall be reinstated in service. We, however, while directing reinstatement of the appellant, keeping in view the fact that no work had been taken from him, direct that only 50% of the back wages shall be payable. The appeal is allowed with the abovementioned directions……"

The order passed by the Supreme Court in **Narindra Mohan Arya**[3] was under Article 142 of the Constitution of India, which confers power on the Supreme Court to pass orders as is necessary for doing complete justice in any cause or; matter pending before it.

I n **The Managing Director, U.P. Warehousing Corporation Vs. Vijay Narayan Vajpayee**[15], the Supreme Court observed:

"…… Further contention of the learned Counsel for the appellant is that even if the dismissal of the respondent was wrongful, the High Court could only quash the same, but it could not in the exercise of its certiorari jurisdiction under Article 226 of the Constitution give the further direction that the employee should be reinstated in service *with full back wages.* It is maintained that in giving this further direction, the High Court had overleaped the bounds of its jurisdiction.

There appears to be force in this contention. It must be remembered that in the exercise of its certiorari jurisdiction under Article 226 of the Constitution, the High Court acts only in a supervisory capacity and not as an Appellate Tribunal. It does not review the evidence upon which the inferior tribunal proposed to base its conclusion; it simply demolishes the order which it considers to be without jurisdiction or manifestly erroneous, but does not, as a rule, substitute its own view for those of the inferior tribunal. In other words, the offending order of the impugned illegal proceeding is quashed and put out of the way as one which should not be used to the detriment of the writ petitioner. Thus, in matters of employment, while exercising its supervisory jurisdiction under Article 226 of the Constitution, over the orders and quasi-judicial proceeding of an administrative authority not being a proceeding under the Industrial/Labour Law before an Industrial/Labour Tribunal culminating in dismissal of the employee, the High Court should *ordinarily*, in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as a consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored); such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court. The instant case is not one under Industrial/ Labour Law. The respondent employee never raised any industrial dispute, nor invoked the jurisdiction of the Labour Court or the Industrial Tribunal. He directly moved the High Court for the exercise of its special jurisdiction under Article 226 of the Constitution for challenging the order of dismissal primarily on the ground that it was violative of the principles of natural justice which required that his public employment should not be terminated without giving him a due opportunity to defend himself and to rebut the charges against him. Furthermore, whether a workman or employee of a statutory authority should be reinstated in public employment *with or without full back wages*, is a question of fact depending on evidence to be produced before the tribunal. If after the termination of his employment the workman/ employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these twofold reasons, we are of opinion that the High Court was in error in directing payment to the employee *full back wages……..*" *(emphasis supplied).*

When the enquiry is found to be defective, it would not be proper to direct reinstatement with all consequential benefits. The matter is required to be remitted to the

disciplinary authority to follow the procedure from the stage at which the fault is pointed out and to take action in accordance with law. The consequential benefits would depend upon the result of the enquiry and the order passed thereon. (**State of Punjab Vs. Dr. Harbhajan Singh Greasy**[16]).

The impugned order of punishment dated 10.09.1998 is quashed leaving it open to the respondents to take action against the petitioner in accordance with law. The respondents shall examine the consequences of the impugned order of punishment being set aside, and the claim of the petitioner herein for being reinstated into service, in accordance with the rules, within a period of one month from the date of receipt of a copy of the order.

The writ petition is accordingly disposed of. However, in the circumstances, without costs.

_____

Date: -12-2006 RAMESH RANGANATHAN,J

Note: L.R. copy to be marked.
B/o
MRKR/ASP

---

[1] 1999(3) SCC 679
[2] (2006(8) Supreme 690
[3] (2006) 4 SCC 713)
[4] 2002(5) ALD 406 (DB)
[5] 1995(1) ALD 500
[6] AIR 1968 SC 266
[7] AIR 1968 SC 236
[8] 1999(7) SCC 332
[9] 1996(10) SCC 659
[10] 2002(1) ALD 280(FB)
[11] 2004 (8) SCC 88
[12] AIR 1961 SC 1070
[13] 1995(3) ALD 786
[14] 2000(1) ALT (Crl.) 84
[15] AIR 1980 SC 840
[16] 1996(9) SCC 322